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SUBJECT: FTA Implementation: First Bumps in the Road

(U) This cable is sensitive but unclassified. Please protect accordingly.

SUMMARY

¶1. (SBU) Summary: During the first 75 days of FTA implementation Moroccan and U.S. businesses have experienced a few difficulties. The most pressing and disturbing implementation difficulties have been in the area of agricultural trade, including an unfavorable rules of origin determination for U.S. almonds, a delay in Washington approval of a system for auctioning wheat tariff rate quotas (TRQs), and two sanitary/phyto-sanitary (SPS) issues related to apples and meat. Moroccan textile and garment exporters report that U.S. customs officials at ports of entry are unaware of Moroccan FTA provisions. Post believes a meeting of the FTA Agricultural Committee (including the SPS Subcommittee) and/or the Customs/Rules of Origin (ROO) committee should be convened in the near future to address these and other issues of mutual interest. The U.S. intellectual property rights (IPR) industry, while thrilled with the FTA provisions, has begun campaigning for improved IPR enforcement. End Summary.

AGRICULTURE

¶2. (SBU) The most pressing and disturbing implementation difficulties have been in the area of agricultural trade. Three separate issues have arisen: The distribution system for FTA wheat importation quotas has not been finalized; a shipment of U.S. almonds failed to meet rules of origin requirements because it was ostensibly not shipped "directly" from the United States to Morocco; and U.S. apple, beef, and poultry meat exporters are facing sanitary and phyto-sanitary challenges. Post believes that these issues alone warrant convening a meeting of the FTA's Agricultural Committee soonest.

Wheat Quota Auction on Hold

¶3. (SBU) In April 2005, the GOM sent USTR a proposed

procedure for auctioning wheat TRQs. Moroccan officials are still awaiting approval from Washington before holding these auctions. If no answer is received, no importer will have the right to import U.S. wheat under the negotiated TRQ during the March-May 2006 timeframe. Embosffs understand that Washington is struggling with issues of marketing year definitions, but Agatt and Econoffs are worried that the first 700,000 ton wheat quota will be lost without quick resolution of this issue.

Indirect Almonds

¶4. (SBU) Two containers of Californian almonds (approximately 40 tons) arrived in Tangier on January 3, 2006, just after the FTA came into effect. The exporter, Campos Brothers, apparently intended to use the 50 ton annual quota for U.S. almonds. Moroccan Customs officials note that the almonds arrived from in-bond storage in Spain. Bills of lading indicate shipment from Houston to Algeciras, Spain and no onward shipment to Morocco. This, argue Moroccan customs officials, does not fulfill the "direct shipment" rule of origin contained in Article 5.1 of the agreement. Furthermore, they argue, in-bond storage is not covered by the transshipment exceptions to Direct Shipment contained in Article 5.9. Moroccan officials note that 5.1 provisions regarding direct shipment were a U.S. demand during the FTA negotiations. The Ambassador, EconCouns and Agatt have repeatedly raised the issue with Moroccan Customs officials, arguing Campos Brothers case. The Moroccan chief of Customs told the Ambassador he would "look into" the matter. Moroccan customs officials say a finding by U.S. Customs that the almonds fulfill FTA ROO would satisfy them enough to change their ruling. Congressman Devin Nunes (R-CA), whose family farms almonds, has contacted the Ambassador regarding this case. Embosffs believe that the direct shipment ROO interpretation precedent will prove important for a wide range of other U.S. agricultural exporters. A meeting of U.S. and Moroccan customs officials under the aegis of an FTA Committee might prove invaluable to resolving an interpretative difference with potential long-term and wide ranging impacts that reach far beyond this initial shipment.

Sanitary and Phyto-Sanitary

¶5. (SBU) Two SPS issues have arisen. We believe that either the FTA Agricultural Market Access Committee or its SPS Subcommittee are the proper venues for resolving these two issues. The first involves apples. Moroccan Agricultural Ministry officials requested new certification requirements on January 25, 2006. While USDA is working to meet these new requirements, we fear that due to the short shipping season for the TRQ - February 1 through May 31 - export opportunities will be lost in the interim. The second SPS difficulty relates to sanitary health certification for beef and poultry. Under the FTA, the United States is entitled to a four thousand ton TRQ for high quality beef and a similar quota for poultry. While the major sanitary obstacles to trade were addressed during the FTA negotiations, other issues (such as BSE) have since arisen. These require renewed efforts to finalize a model health certificate to facilitate trade.

TEXTILES

¶6. (U) Moroccan textile and garment exporters have reported that their U.S. importers are experiencing difficulties with U.S. Customs at ports of entry. U.S. officials are apparently unaware of new FTA market access provisions. One Moroccan exporter, SOMITEX, told Econoff that its importer had to pay tariffs on a product it thought was duty free under the FTA. The MEPI-funded IESC Morocco Fast Track Trade Program reported similar difficulties experienced by its Moroccan SME customers. U.S. garment

importers (e.g. a Liz Claiborne executive) and Casablanca-based trade lawyers have complain about the complexity of the FTA's textile provisions. A U.S. Customs official who is preparing instructions for dissemination to ports of entry admitted to IESC representatives that the Morocco FTA's textile provisions are the most complicated they have encountered. These anecdotes reinforce accusations that U.S. Customs may not have distributed proper instructions to agents at ports of entry. Post would appreciate any guidance on the status of information dissemination so that emboffs can brief Moroccan government officials and exporters. Encouragingly, these negative experiences are limited to textile and garment exporters. Other Moroccan manufactured goods exporters report no difficulties (in fact they have been impressed by U.S. customs preparedness).

IPR

¶17. (SBU) While U.S. industry is largely thrilled with the exceptionally high levels of IPR protection contained in the FTA, representatives of U.S. companies have already begun complaining about inadequate enforcement, especially for pirated software, CDs and DVDs. Microsoft (as local Business Software Alliance representative) has approached econoffs regarding Morocco's failure to enforce adequately laws governing software licensing. Most egregiously, Microsoft claims (but has yet to provide a detailed quantitative report on the breadth or magnitude of the problem, and it refuses to "name names") that Moroccan ministries are using unlicensed products, in explicit contravention of FTA provisions. Trademark holders (including Mars candies) have complained that court cases take too long and that without injunctions, infringers continue to operate with impunity during legal proceedings. Emboffs note that MEPI-funded USPTO technical assistance for patent and trademark protection, MEPI-funded CLDP training for copyright and ISP liability, and USAID's Business New Business Environment Program will address IPR enforcement issues.

COMMENT:

¶18. Comment: Having worked hard for more than three years within the USG and with our GOM and private sector partners on both sides of the Atlantic not only to negotiate and implement the accord, but to raise its profile through persistent public diplomacy campaigns, Embassy Rabat wants to ensure that the FTA fulfills its promise. As the GAO found in its report on monitoring and enforcing trade agreements (GAO 05-537), diplomatic posts and Washington trade agencies should redouble efforts to follow-through on our negotiated agreements. Toward that end, we strongly recommend convening appropriate ad hoc experts meetings or meetings of appropriate FTA committees as set out in the FTA to address these initial difficulties and to reduce the probability of new issues arising in the future.
BUSH